



**Report of the  
Chief FOIA Officer  
of the  
U.S. Trade and Development Agency**

**Peggy Philbin  
USTDA Deputy Director and  
Chief FOIA Officer**

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## **FY2013 CHIEF FOIA OFFICER REPORT**

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The United States Trade and Development Agency (USTDA or the Agency) submits this report at the request of the Office of Information Policy of the United States Department of Justice.

### **I. STEPS TAKEN TO APPLY THE PRESUMPTION OF OPENNESS**

**The guiding principle underlying the President's FOIA Memorandum and the Attorney General's FOIA Guidelines is the presumption of openness.**

**Describe the steps your agency has taken to ensure that the presumption of openness is being applied to all decisions involving the FOIA. To do so, you should answer the questions listed below and then include any additional information you would like to describe how your agency is working to apply the presumption of openness.**

USTDA is a small, independent federal agency with less than 50 full-time employees that focuses on promoting United States exports and advancing economic growth in developing and middle income countries. Given the nature of USTDA's work, the Agency has a strong interest in making sure that accurate, relevant information about its activities is available to and easily accessible by the public. Available via USTDA's website, for instance, is a virtual library where any person can search for and request reports on Agency-funded feasibility studies and technical assistance projects, [https://www.ustda.gov/library/search\\_criteria.cfm](https://www.ustda.gov/library/search_criteria.cfm). Due in part, we believe, to USTDA's success in making a substantial amount of relevant information about its activities publicly available, the Agency receives only a small number of FOIA requests each year. Notably, USTDA received only 14 FOIA requests in FY2012, half the number it received in FY2011.

For a number of years, USTDA has assigned one Assistant General Counsel, who acts as the Agency's FOIA Public Liaison, to review FOIA requests as part of his or her overall agency responsibilities. Because the number of FOIA requests USTDA receives is small, the Assistant General Counsel is able to review each request directly, applying the presumption of openness to each one. In addition, for some time, one Information Resource Assistant has been assigned to help the Assistant General Counsel log and process FOIA requests. USTDA has found that its system for processing FOIA requests is efficient and ensures the meaningful application of the presumption of openness to each request. In FY2012, USTDA processed 14 FOIA requests (the same number it received during the year) and responded to nearly half of those requests with full record grants.

#### **1. Did your agency hold an agency FOIA conference, or otherwise conduct training during this reporting period?**

Yes, the Assistant General Counsel in charge of FOIA matters conducted an agency-wide FOIA training in early March, 2012.

**2. Did your FOIA professionals attend any FOIA training, such as that provided by the Department of Justice?**

Yes. The Assistant General Counsel in charge of FOIA matters attended the Department of Justice's two-day "Freedom of Information Act for Attorneys and Access Professionals" training course.

**3. Did your agency make any discretionary releases of otherwise exempt information?**

USTDA did not make any discretionary releases of otherwise exempt information during the reporting period.

**4. What exemptions would have covered the information that was released as a matter of discretion?**

Because of the nature of USTDA's work, the exemption that would most often apply to information that could be released as a matter of discretion is Exemption 5, which pertains to privileged inter-agency or intra-agency memoranda or letters.

**5. Provide a narrative description, or some examples of, the types of information that your agency released as a matter of discretion.**

USTDA did not make any discretionary releases of otherwise exempt information.

**6. Describe any other initiatives undertaken by your agency to ensure that the presumption of openness is being applied.**

USTDA provides individualized legal attention to each FOIA request. Specifically, the Assistant General Counsel in charge of FOIA matters reviews each FOIA request and all potentially responsive agency records, and applies the presumption of openness in processing the request. USTDA believes that the individualized attention to each request by an attorney knowledgeable about FOIA's requirements ensures the consistent and proper application of the presumption of openness.

**II. STEPS TAKEN TO ENSURE THAT YOUR AGENCY HAS AN EFFECTIVE SYSTEM IN PLACE FOR RESPONDING TO REQUESTS**

**As the Attorney General emphasized in his FOIA Guidelines, "[a]pplication of the proper disclosure standard is only one part of ensuring transparency. Open government requires not just a presumption of disclosure, but also an effective system for responding to FOIA requests."**

**This section should include a discussion of how your agency has addressed the key roles played by the broad spectrum of agency personnel who work with FOIA professionals in responding to requests, including, in particular, steps taken to ensure that FOIA professionals have sufficient IT support.**

**Describe here the steps your agency has taken to ensure that its system for responding to requests is effective and efficient. To do so, answer the questions below and then include any additional information that you would like to describe how your agency ensures that your FOIA system is efficient and effective.**

When a new FOIA request is received by USTDA, the request is logged into the Agency's electronic FOIA log and forwarded to the Assistant General Counsel in charge of FOIA matters, who reviews the request. The search for responsive documents is initiated promptly by the Information Resource Assistant and is followed up by the Assistant General Counsel. Working in cooperation with USTDA's other FOIA personnel, the Assistant General Counsel determines whether USTDA has any responsive documents and applies the presumption of openness in determining which documents are releasable. The Assistant General Counsel continuously works to ensure that the system for responding to requests is effective and efficient, and if necessary implements changes or improvements as appropriate.

**1. Do FOIA professionals within your agency have sufficient IT support?**

Yes. USTDA has found the level of IT support provided to its FOIA professionals to be adequate.

**2. Do your agency's FOIA professionals interact with your Open Government Team?**

Yes. USTDA's Chief FOIA Officer and Assistant General Counsel in charge of FOIA matters interact regularly with the Open Government Team.

**3. Has your agency assessed whether adequate staffing is being devoted to FOIA administration?**

Yes. The Chief FOIA Officer and the Assistant General Counsel in charge of FOIA matters meet to discuss whether adequate staffing is being devoted to FOIA administration. USTDA expects to continue these meetings regularly to ensure that adequate staffing is in place. Given that USTDA received only half as many FOIA requests in FY2012 as it received in FY2011 and processed those requests promptly, the Agency did not find it necessary to increase its level of FOIA staffing during the reporting period.

**4. Describe any other steps your agency has undertaken to ensure that your FOIA system operates efficiently and effectively such as conducting self-assessments to find greater efficiencies, improving search processes, streamlining consultations, eliminating redundancy, etc.**

USTDA continually monitors its system for processing FOIA requests with an eye toward making it more efficient and effective.

### **III. STEPS TAKEN TO INCREASE PROACTIVE DISCLOSURES**

**Both the President and Attorney General focused on the need for agencies to work proactively to post information online without waiting for individual requests to be received.**

**Describe here the steps your agency has taken to increase the amount of material that is available on your agency website, including providing examples of proactive disclosures that have been made during this last reporting period (i.e., from March 2012 to March 2013). In doing so, answer the questions listed below and describe any additional steps taken by your agency to make and improve proactive disclosures of information.**

**1. Provide examples of material that your agency has posted this past year.**

One significant development in this respect is the creation of a new section on USTDA's website for the Agency's Office of Program Evaluations, <http://www.ustda.gov/program/eval/>. As explained in that section, the Office of Program Evaluations measures the success of USTDA-funded projects in terms of U.S. export generation and host country development impacts. By explaining how the Office undertakes its work and setting forth some of its determinations including, *e.g.*, exports generated per sector and export contracts by state, the Section significantly increases USTDA's overall transparency and accountability. In addition, USTDA posted numerous press releases, business opportunities and events on its website during the reporting period. All press releases issued by USTDA in 2012, for instance, are available at the following link, <http://www.ustda.gov/news/pressreleases/2012/>, and an example of an event posting is available here, <http://www.ustda.gov/news/events/2012/MENAEurope/Turkey/TurkeySmartGridRTM.asp>.

**2. Beyond posting new material, is your agency taking steps to make the posted information more useful to the public, especially to the community of individuals who regularly access your agency's website, such as soliciting feedback on the content and presentation of the posted material, improving search capabilities on the site, creating mobile applications, providing explanatory material, etc.?**

Yes. USTDA is a commercially-focused agency with a significant interest in disseminating clear and useful information about its activities to the public. During the reporting period, USTDA added the ShareThis API to its web pages so that end users may share the pages with others via various outlets such as email and social media sites. Further, the Agency has given end users the capability to add event listings to their individual Google and Outlook calendars, and has added a Twitter feed link to the bottom of all of its press release pages. USTDA's website is well-organized, regularly updated and searchable, and contains clear and easy-to-find contact information for a number of individuals, including USTDA's webmaster.

**3. If so, provide examples of such improvements.**

The ShareThis API may be viewed at the following link, [http://www.ustda.gov/news/pressreleases/2012/LAC/Brazil/BrazilBahiaSeinfraAirportExpansion\\_072512.asp](http://www.ustda.gov/news/pressreleases/2012/LAC/Brazil/BrazilBahiaSeinfraAirportExpansion_072512.asp); an example of a calendar link may be viewed here, <http://www.ustda.gov/news/events/2013/SouthAsia/India/USIndiaAviationSecurityWS.asp>; and finally, an example of the Twitter feed may be seen at the bottom of the following press release, [http://www.ustda.gov/news/pressreleases/2012/LAC/Chile/ChileNationalEmergencyBackboneNetwork\\_080112.asp](http://www.ustda.gov/news/pressreleases/2012/LAC/Chile/ChileNationalEmergencyBackboneNetwork_080112.asp).

**4. Describe any other steps taken to increase proactive disclosures at your agency.**

USTDA continually strives to increase proactive disclosures with respect to USTDA's library database of USTDA-funded activities. USTDA maintains a regularly updated web page on USTDA "Library Holdings" which allows individuals to electronically search USTDA's library database for completed USTDA-funded studies by region, country or sector.

#### **IV. STEPS TAKEN TO GREATER UTILIZE TECHNOLOGY**

**A key component of the President's FOIA Memorandum was the direction to "use modern technology to inform citizens about what is known and done by their Government." In addition to using the internet to make proactive disclosures, agencies should also be exploring ways to utilize technology in responding to requests. In 2010 and 2011, agencies reported widespread use of technology in receiving and tracking FOIA requests and preparing agency Annual FOIA Reports. For 2013, as we did in 2012, the questions have been further refined and now also address different, more innovative aspects of technology use.**

*Electronic receipt of FOIA requests:*

**1. Can FOIA requests be made electronically to your agency?**

Yes. In FY2011, USTDA established an email address that the public may use to submit FOIA requests to the Agency, [foia@ustda.gov](mailto:foia@ustda.gov). FOIA requests may now be made to USTDA via mail, facsimile and email.

**2. If your agency is decentralized, do *all* components of your agency receive requests electronically?**

USTDA is a small agency and processes its FOIA requests on a centralized basis.

*Online tracking of FOIA requests:*

**3. Can a FOIA requester track the status of his/her request electronically?**

No, a FOIA requester cannot yet track the status of his/her request electronically.

- 4. If so, describe the information that is provided to the requester through the tracking system. For example, some tracking systems might tell the requester whether the request is “open” or “close,” while others will provide further details to the requester throughout the course of the processing, such as “search commenced” or “documents currently in review.” List the specific types of information that are available through your agency’s tracking system.**

N/A.

- 5. In particular, does your agency tracking system provide the requester with an estimated date of completion for his or her request?**

N/A.

- 6. If your agency does not provide online tracking of requests, is your agency taking steps to establish this capability?**

USTDA is continually working to improve its FOIA processing procedures. Given the relatively small number of requests the Agency receives each year and its system for logging FOIA requests, the Assistant General Counsel and Information Resource Assistant are readily able to locate information about the status of FOIA requests. The Agency also endeavors to notify requesters of any delay in the processing of specific requests engendered by, for instance, a need to consult with another agency or notify a submitter of potentially privileged or confidential commercial or financial information.

*Use of technology to facilitate processing of requests:*

- 7. Beyond using technology to redact documents, is your agency taking steps to utilize more advanced technology to facilitate overall FOIA efficiency, such as improving record search capabilities, utilizing document sharing platforms for consultations and referrals, or employing software that can sort and re-duplicate documents?**

Given the small number of FOIA requests received by USTDA each year, and the direct review and processing of each request by the Assistant General Counsel, USTDA believes that its current system makes appropriate use of technology.

- 8. If so, describe the technological improvements being made.**

Please see above.

**V. STEPS TAKEN TO REDUCE BACKLOGS AND IMPROVE TIMELINESS IN RESPONDING TO REQUESTS**

The President and the Attorney General have emphasized the importance of improving timeliness in responding to requests. This section addresses both time limits and backlog reduction. Backlog reduction is measured both in terms of numbers of backlogged requests or appeals and by looking at whether agencies closed their ten oldest requests and appeals. *For the figures required in this Section, please use those contained in the specified sections of your Agency's Annual 2012 FOIA report.*

- 1. Section VII.A of your agency's Annual FOIA Report, entitled "FOIA Requests – Response Time for All Processed Requests," includes figures that show your agency's average response times for processed FOIA requests. For agencies utilizing a multi-track system to process requests, there is a category for "simple" requests, which are those requests that are placed in the agency's fastest (non-expedited track), based on the low volume and/or simplicity of the records requested. If your agency does not utilize a separate track for processing simple requests, please answer the questions below using the figure provided in your report for your non-expedited requests.**

- a. Does your agency utilize a separate track for simple requests?**

Yes.

- b. If so, for your agency overall, for Fiscal Year 2012, was the average number of days to process simple requests twenty working days or fewer?**

N/A. For FY2012, USTDA did not receive any FOIA requests which fell within the "simple" category. Accordingly, the number of days to process simple requests reported on the Agency's 2012 Annual FOIA Report is 0.

- c. If your agency does not track simple requests separately, was the average number of days to process non-expedited requests twenty working days or fewer?**

USTDA does track simple requests separately, but did not receive any FOIA requests in FY2012 that were placed into the simple track. The answer to the question based on all non-expedited requests processed by USTDA in FY2012 is no. The average number of days to process those requests was slightly above twenty days, 20.6 to be exact.

- 2. Sections XII.D.(2) and XII.E.(2) of your Agency's Annual FOIA Report, entitled "Comparison of Number of Requests/Appeals from Previous and Current Annual Report – Requests/Appeals Received, Processed, and Backlogged" show the numbers of any backlog of pending requests or pending appeals From Fiscal Year 2012 as compared to Fiscal Year 2011. You should refer to those numbers when completing this Section of your Chief FOIA Officer Report. In addition, Section**



**VII.E, entitled “Pending Requests – Ten Oldest Pending Perfected Requests” and Section VI.C.(5), entitled “Ten Oldest Pending Administrative Appeals,” both from Fiscal Year 2011 and Fiscal Year 2012 should be used for this section.**

- a. If your agency had a backlog of requests at the end of Fiscal Year 2012, did that backlog decrease as compared to Fiscal Year 2011?**

The backlog remained the same from FY2011 to FY2012. At the end of both years, USTDA had only one backlogged FOIA request.

- b. If your agency had a backlog of administrative appeals at the end of Fiscal Year 2012, did that backlog decrease as compared to Fiscal Year 2011?**

USTDA did not have any backlogged FOIA appeals at the end of FY2012.

- c. In Fiscal Year 2012, did your agency close the ten oldest requests that were pending as of the close of Fiscal Year 2011?**

No. USTDA closed all but one FOIA request that was pending at the end of FY2011.

- d. In Fiscal Year 2012, did your agency close the ten oldest administrative appeals that were pending as of the close of Fiscal Year 2011?**

There were no administrative appeals pending as of the close of FY2011.

- 3. If you answered “no” to any of the above questions, describe why that has occurred. In doing so, answer the following questions then include any additional explanation:**

**Request Backlog:**

- a. Was the lack of a reduction in the request backlog a result of an increase in the number of incoming requests?**

USTDA generally kept pace with its incoming FOIA requests, however, one backlogged request that was pending at the end of FY2011 remained pending at the end of FY2012.

- b. Was the lack of a reduction in the request backlog caused by a loss of staff?**

N/A. See above.

- c. Was the lack of a reduction in the request backlog caused by an increase in the complexity of requests received?**

N/A.

- d. What other causes, if any, contributed to the lack of a decrease in the request backlog?**

N/A.

**Administrative Appeal Backlog:**

- a. Was the lack of a reduction in the backlog of administrative appeals a result of an increase in the number of incoming appeals?**

N/A. There were no backlogged appeals at the end of FY2011.

- b. Was the lack of a reduction in the appeal backlog caused by a loss of staff?**

N/A.

- c. Was the lack of a reduction in the appeal backlog caused by an increase in the complexity of the appeals received?**

N/A.

- d. What other causes, if any, contributed to the lack of a decrease in the appeal backlog?**

N/A.

- 4. OIP has issued guidance encouraging agencies to make interim releases whenever they are working on requests that involve a voluminous amount of material or require searches in multiple locations. By providing rolling releases to requesters agencies facilitate access to the requested information. If your agency had a backlog in Fiscal Year 2012, please provide an estimate of the number of cases in the backlog where a substantive, interim response was provided during the fiscal year, even though the request was not finally closed.**

N/A. USTDA had only one backlogged request at the end of FY2012, and did not provide a substantive, interim response in that one instance.

## **Use of FOIA's Law Enforcement Exclusions**

**In order to increase transparency regarding the use of FOIA's statutory law enforcement exclusions, which authorize agencies under certain exceptional circumstances to "treat the records as not subject to the requirements of [the FOIA], 5 U.S.C. § 552(c)(1), (2), (3), please answer the following questions:**

**1. Did your agency invoke a statutory exclusion in Fiscal Year 2012?**

No.

**2. If so, what is the total number of times exclusions were invoked?**

N/A.

## **Spotlight on Success**

**Out of all the activities undertaken by your agency since March 2012 to increase transparency and improve FOIA administration, describe here one success story that you would like to highlight as emblematic of your efforts. The success story can come from any one of the five key areas.**

USTDA wishes to highlight that it received only half as many FOIA requests in FY2012 as it received in FY2011. The Agency attributes that substantial reduction at least in part to its efforts to proactively disclose a substantial amount of relevant information about its activities on its website, [www.ustda.gov](http://www.ustda.gov). As mentioned previously, that website contains a "virtual library" where any person can search for reports on USTDA-funded feasibility study and technical assistance projects by sector, subsector, region, country and/or date. It also contains USTDA's Annual Report and a Report of USTDA-sponsored events and conferences for the Fiscal Year. USTDA believes that its proactive disclosure of a large amount of relevant information substantially lessens the need for members of the public to utilize FOIA to obtain information about its activities.

Further, USTDA continued to process the FOIA requests it did receive expeditiously and applied the presumption of openness to those requests. The Agency processed almost all of the requests it received in less than twenty days, responded to nearly half of those requests with full record grants and did not assert Exemption 5 as a basis for withholding any records. Overall, USTDA employed its best efforts to process all FOIA requests promptly and thoroughly and to apply the presumption of openness to all FOIA determinations, and will continue to do so in FY 2013.

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